

**FRANKLIN GRAY PATENTS, LLC**  
ROBERT H. FRANTZ, REGISTERED US PATENT AGENT

JUN 13 2005

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DATE: June 13, 2005

PAGES: 15 (inclusive)

In re the Application of:

Leland James Wieseuegel, *et al.* )

Serial Number: 09/726,009 )

Group: 3628

Docket Number: AUS9-2000-0738-US1 )

Examiner: Clement B. Graham

Filed on: 11/29/2000 )

For: "System and Method for Online )

Offer and Bid Management with Sealed )

Bids" )

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JUN 13 2005

PTO/SB/17 (12-04v2)

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Effective on 12/08/2004.  
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).**FEE TRANSMITTAL**  
**For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 500.00

**Complete if Known**

Application Number	09/726,009
Filing Date	11/29/2000
First Named Inventor	Leland James Wieseheugel
Examiner Name	Clement B. Graham
Art Unit	3628
Attorney Docket No.	AUS9-2000-0738-US1

**METHOD OF PAYMENT (check all that apply)**☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_☒ Deposit Account Deposit Account Number: 09-0447 Deposit Account Name: IBM

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**FEE CALCULATION****1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

**2. EXCESS CLAIM FEES****Fee Description**

Each claim over 20 (including Reissues)

Fee (\$)	Small Entity Fee (\$)
50	25

Each independent claim over 3 (including Reissues)

200	100
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Multiple dependent claims

360	180
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Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 20 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
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- 3 or HP = \_\_\_\_\_ x \_\_\_\_\_ = \_\_\_\_\_

HP = highest number of independent claims paid for, if greater than 3.

**3. APPLICATION SIZE FEE**

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$250 (\$125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
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- 100 = \_\_\_\_\_ / 50 = \_\_\_\_\_ (round up to a whole number) x \_\_\_\_\_ = \_\_\_\_\_

**4. OTHER FEE(S)**

Non-English Specification, \$130 fee (no small entity discount)

Fees Paid (\$)

Other (e.g., late filing surcharge): Filing of an Appeal Brief 37 CFR 41.20(b)(2)

500.00

**SUBMITTED BY**

Signature	<i>Robert Frantz</i>	Registration No. (Attorney/Agent) 42,553	Telephone 405-812-5613
Name (Print/Type)	Robert H. Frantz	Date June 13, 2005	

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## APPEAL BRIEF

### *Real Party in Interest*

The subject patent application is owned by International Business Machines Corporation of Armonk, NY.

### *Related Appeals and Interferences*

This application is related to US Patent Application serial number 09/714,726, which is currently under appeal by appellant.

### *Status of Claims*

On May 24, 2005, appellant appealed from the final rejections of claims 1 - 21. An amendment to the independent claims 1, 7, and 13, was entered on May 10, 2004. All other claims are in their originally filed state. The claims are reproduced in the Appendix to this Appeal Brief.

### *Summary of the Invention*

The present invention provides sales offering method and system for restricting access by traders to collected sealed bids in an online auction-like business-to-business offering and bidding system (*pg. 12 lines 8 - 14*). In this particular business-to-business offering arrangement, a "trader" is an intermediary third party (*Fig. 2 #24*) between a purchasing broker

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Serial No. 09/726,009

Leland James Wieseuegel

Page 2 of 13

(Fig. 2 #25), and a offeror (Fig. 2 #21). This type of three-party auction-like offering system is employed by some manufacturers to promote sales of products to retail outlets via a trader or broker (pg. 12 lines 2 - 3).

A computer-readable bid repository of collected bids (pg. 15 lines 8 - 10, Fig. 5 #52) communicative to an online offering and bidding system (pg. 15 line 10 to pg. 16 line 5, Fig. 5 #51) is provided by the invention, in which the collected bids each have a "seal status" indication field (pg. 19 line 22 - pg. 20 line 4) .

Responsive to querying the bid repository by a trader for bids which match parameters of a Broker Profile Matrix (Fig. 4) associated with the bidding-party (e.g. the broker) (Fig. 7 #73 and #76, pg. 20 lines 11 - 14), only bids which are indicated as being unsealed by the seal status indication field (and which match the Broker Profile Matrix parameters), the details of the unsealed are presented to the trader and the details of the sealed bids are prevented from presentation (pg. 20, lines 11 - 14).

Thus, through employing the present invention, a three-party business-to-business offering system is enabled to suppress showing details of sealed bids to traders, while showing details only of unsealed bids which match the Broker's Profile Matrix.

#### ***Grounds for Rejection For Which Review is Sought***

In the first Office Action on the merits, claims 1 - 21 were rejected under 35 U.S.C. §103(a) over US Patent 6,055,518 to Franklin in view of US Patent 6,161,099 to Harrington. Applicant responded by amending independent claims 1, 7 and 14.

In the second Office Action on the merits, the previous rejections over Franklin in view of Harrington were withdrawn, and new rejections were issued for claims 1 - 21 under 35 U.S.C. §103(a) over US Patent 6,598,029 to Johnson (hereinafter "Johnson") in view of US Patent 5,136,501 to Silverman (hereinafter "Silverman"). The rejections were made final.

Serial No. 09/726,009

Leland James Wieseuegel

Page 3 of 13

***Rejection under 35 U.S.C. §103(a) over Johnson in view of Silverman*****Claims 1, 7, and 14**

In the rationale for the final rejections of Claims 1, 7, and 14 over Johnson in view of Silverman, it was stated that Johnson does not teach a Broker Profile Matrix or handling of sealed bids, and thus Silverman was combined with Johnson. Appellant contends that Silverman also does not teach our Broker Profile Matrix or handling sealed bids, that Silverman's term "anonymous" has been erroneously equated to our "sealed" term, and that Silverman's anonymous credit limit values has been erroneously equated to our Broker Profile Matrix.

**"Anonymous" Is Not The Same As "Seal-Bid"**

Silverman is directed towards "anonymous" trading processes and systems where the *identities* of the parties, but not the *price-quantity* details of their bids, are kept secret from each other. Silverman has contrasted anonymous trading systems to a "conversational video trading system", in which the counterparties can determine the *identity* of each other, as explained in Silverman's disclosure (col. 1 lines 37 - 47, emphasis added):

... Such systems, while providing rapid video conversation capability, are not anonymous systems nor do they provide for automated anonymous trading such as is possible in a matching system. Of course, conversational dealing systems have their place in the market and serve particular needs where appropriate. However, anonymous matching systems are also often desired and, by their very nature, do not normally employ a conversation capability since the parties to the transactions are unknown until the transaction has been completed. ...

Silverman returns to the need of keeping the identities of the bidding and the offering parties confidential or anonymous until matching bids and offers are found throughout their disclosure, as this is a main object of their invention.

Serial No. 09/726,009

Leland James Wieseuegel

Page 4 of 13

Silverman's offer and bid matching is done automatically if the terms match and if each party's credit limit has not been exceeded. The credit limit for each party is also maintained "anonymously" by the system such that neither party is aware of their credit limit values (col. 2, lines 41 - 43, emphasis added):

...with these counterparty credit limits not being provided to the keystations and, thus, the gross counterparty credit limits are kept anonymous in the system. The only time that the keystation is made aware of the parties involved in the transaction is after the transaction has been completed, but they are preferably never made aware of the counterparty credit limits assigned to them. ...

and (col. 2, lines 50 - 53):

..Thus, in the system of the present invention, the host may anonymously inhibit the occurrence of trades even though the price and quantity would otherwise match....

In Silverman's system, the counterparties' *identities* are kept confidential or anonymous from each other, but the *quantity and price* information is not kept confidential. For example, see Silverman's figures 4 and 5 which clearly illustrate bidder and offeror amounts, as well as col. 4 lines 12 - 24 (emphasis added):

... Preferably, the host computer, which dynamically updates the prices based on the best available bids in the system, processes the matching transactions for a given trading instrument in time order entry to the matching system, with the matching criteria further comprising an order priority based on price, quantity type and time order entry. With respect to quantity type, it may be a primary quantity type or a more quantity type, with the primary quantity type being disclosed to the other keystations in the system while the more quantity type is maintained as a hidden value of the additional quantity beyond the disclosed primary quantity at which a given keystation is willing to trade for a given trading instrument. ...

Serial No. 09/726,009

Leland James Wieseuegel

Page 5 of 13

As such, in Silverman's system, each counterparty such as an offeror or bidder is allowed to see *price-quantity* details of other bidding parties. The counter parties, however, are not allowed to know the *identities* of the other parties, so long as their credit limits are not exceeded, which is what makes their system an "anonymous" bidding system.

As the term "anonymous" is employed by Silverman, it means keeping the *identities* of the counterparties (e.g. offerors and bidders) secret from each other, but the bidders' price-quantity details are disclosed to other parties. A "sealed" bid, however, does not necessarily keep *identities* secret, but keeps the price-quantity details secret until the end of the bidding period (e.g. until the auction closes). Sealed bids are well understood in the field of auctioning, and our use of this term is consistent with customary definitions. For example, one online resource [www.OnlineAuction.com](http://www.OnlineAuction.com) explains a "sealed bid auction" as follows:

#### Sealed Bid Auction

Seller has the choice to list their auction with or without entering an optional reserve price. Bidder places a sealed bid, **the amount not displayed**. The item is sold to the high bidder placing the winning sealed bid meeting or exceeding the Sellers optional reserve price. Sealed Bid auctions **display the current number of bids received**. **The winning sealed bid amount is displayed at end of auction duration**.

The following table summarizes and compares the two definitions:

	Disclosure of Bidder's Identities to Other Bidding Parties	Disclosure of Bid Details (e.g. price and/or quantities) to Other Bidding Parties
Silverman's "anonymous trading"	None. Identities are kept secret	Yes. Bid amounts and history are shown.
"Sealed-bid" Auctions	Identities may or may not be kept secret	No. Bid details are always kept secret until close of auction.

Serial No. 09/726,009

Leland James Wieseuegel

Page 6 of 13

Thus, a "sealed-bid" auction is not the same as an "anonymous trading system". Further, Silverman is silent as to providing an unconventional definition of "anonymous", so the conventional meaning must be used to interpret the teachings of Silverman's disclosure.

"Counter Party Credit Limits" Are Not The Same As Broker Profile Matrix

Silverman's "counter party credit limits" are just and only that - numerical limits as to the *credit* which can be extended between parties during a transaction. Silverman is silent as to the information and functionality we have described and claimed regarding our Broker Profile Matrix (e.g. commodity category, geographic region, etc.). Thus, Silverman fails to teach our Broker Profile Matrix as we have defined it:

A broker profile matrix is disclosed in FIGURE 4. For each broker, a broker profile matrix is defined, which is a two-dimensional table for location and category in this preferred embodiment. It will be recognized, however, by those skilled in the art that such a broker profile matrix may be multidimensional beyond the two-dimensional example shown, or single dimensional. In this example of FIGURE 4, the locations are indexed against the plurality of categories, and then a logical enabler, such as a Boolean flag, is recorded for each combination of location and category pairs. A profile matrix defines the "entitlement" for a particular broker. Available products or services which match the location-category parameter pairs in a broker's entitlement profile matrix are made available to that broker, and products and services which do not meet the parameters of the profile matrix are not presented for bidding to that broker. For example in FIGURE 4, the completed profile matrix for a hypothetical broker defines that the broker who is entitled to receive offerings for category \_1 products in location\_1 and location\_3, and for category\_2 products only in location\_1, and for category\_Y products only in location\_1. The hypothetical broker of this example is not authorized or entitled to receive offerings for any other location-category parameter pair. (Pg. 14 line 13 - pg. 15 line 7)

Silverman's counterparty credit limits are devoid of category and geographic locale parameters, and thus this step, element or limitation of Claims 1, 7, and 21 is not taught by Johnson in view of Silverman.



Serial No. 09/726,009

Leland James Wieseuegel

Page 7 of 13

**Claims 2 - 6, 8 - 13, and 15 - 21**

Claims 2 - 6, 8 - 13, and 15 - 21 depend from claims 1, 7, and 14, respectively, and therefore incorporate the steps, elements or limitations not taught by Johnson in view of Silverman as discussed in the forgoing paragraphs.

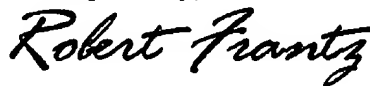
***Summary***

For the foregoing reasons, it is submitted that the rejections of Claims 1 - 21 are erroneous for the following reasons:

- (a) our claims have not been examined in light of our specification and the definitions for our terminology provided therein;
- (b) the rationale for the rejections fails to employ industry-accepted definitions of terms when interpreting claim terms for which a reference disclosure is silent; and
- (c) the entirety of the disclosure of the cited art was not considered in order to determine the meaning of the terms used in the cited art.

For these reasons, appellant requests reversal of the rejections of Claims 1 - 21.

Respectfully,



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Serial No. 09/726,009

Leland James Wieschuegel

Page 8 of 13

**Appendix A****Clean Form of Amended Claims****Claim 1 (previously amended):**

A sales offering method for restricting access by traders to collected online sealed bids in an online offering and bidding system, said method comprising the steps of:

providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field;

querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing a intermediary third party between a bidder and a offeror; and

presenting via a computer user interface said unsealed bids to said trader thereby preventing presentation of bids which are sealed to traders.

**Claim 2 (original):**

The method as set forth in Claim 1 wherein said step of providing a computer-readable bid repository comprises providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

**Claim 3 (original):**

The method as set forth in Claim 2 wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid status as sealed or unsealed.

Serial No. 09/726,009Leland James WieseuegelPage 9 of 13**Claim 4 (original):**

The method as set forth in Claim 2 wherein said step of providing database records representing sealed bids and unsealed bids comprises providing database records which include a field indicating a bid seal expiration time.

**Claim 5 (original):**

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids.

**Claim 6 (original):**

The method as set forth in Claim 1 wherein said step of unsealing one or more sealed bids in said bid repository through a restricted process comprises:

- providing a bid seal expiration time parameter with each sealed bids;
- providing a system clock or timer;
- comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive; and
- determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids.

Serial No. 09/726,009Leland James WieseuegelPage 10 of 13**Claim 7 (previously amended):**

A computer-readable medium containing program code for a sales offering computer system for restricting access by traders to collected online sealed bids in an online offering and bidding system, said program code when executed by a sales offering computer system causes the sales offering computer system to perform the steps of:

providing a computer-readable bid repository of collected bids communicative to an online offering and bidding system, said collected bids each having an associated seal status indication field; querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing an intermediary third party between a bidder and an offeror; and presenting via a computer user interface said unsealed bids to said trader thereby preventing presentation of bids which are sealed to traders.

**Claim 8 (original):**

The computer-readable medium as set forth in Claim 7 wherein said program code for providing a computer-readable bid repository comprises program code for providing a computer database in which each sealed bid and unsealed bid are represented by one or more database records.

**Claim 9 (original):**

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid status as sealed or unsealed.

**Claim 10 (original):**

The computer-readable medium as set forth in claim 8 wherein said program code for providing database records representing sealed bids and unsealed bids comprises program code for providing database records which include a field indicating a bid seal expiration time.

**Claim 11 (original):**

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for providing a secure system administrator console and identification process which allows only an authorized system administrator to change sealed bids to unsealed bids.

Serial No. 09/726,009Leland James WieseuegelPage 11 of 13

## Claim 12 (original):

The computer-readable medium as set forth in claim 7 wherein said program code for unsealing one or more sealed bids in said bid repository through a restricted process comprises program code for causing the sales offering computer system to perform the steps of:

providing a bid seal expiration time parameter with each sealed bids;

accessing or reading a system clock or timer;

comparing each bid seal expiration time parameter with a current status of a system clock or timer responsive; and

determining that bids for which bid seal expiration time parameters which are before or less than the current status of a system clock or timer are unsealed bids.

Serial No. 09/726,009

Leland James Wieseuegel

Page 12 of 13

## Claim 13 (previously amended):

A sealed bid sales offering system in a computer network, said computer network enabling communications between said sales offering system and trader consoles, said offering system comprising:

a bid database containing collected bids, said database being accessible and queriable by said sales offering system, said collected bids each having an associated seal status indication field;

a database query server communicative to said bid database for querying said bid repository for bids which match parameters of a Broker Profile Matrix associated with a trader and which are indicated as being unsealed by said seal status indication field, said trader representing an intermediary third party between a bidder and an offeror; and

an bid communicator for presenting said queried unsealed bids to said trader thereby preventing presentation of sealed bids to a trader.

## Claim 14 (original):

The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is a computer network server.

## Claim 15 (original):

The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is an Internet server.

## Claim 16 (original):

The sealed bid sales offering system as set forth in Claim 14 wherein said computer network server is a Hyper Text Transfer Protocol (HTTP) server.

## Claim 17 (original):

The sealed bid sales offering system as set forth in Claim 13 wherein said sales offering system is adapted for communications with trader console computers which are web browser devices.

## Claim 18 (original):

The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's location code.

Serial No. 09/726,009Leland James WieseuegelPage 13 of 13**Claim 19 (original):**

The system as set forth in Claim 13 wherein said database query server is adapted to retrieve unsealed bids from said bid database for presentation to a trader which meet criteria including a match with a trader's goods category code.

**Claim 20 (original):**

The system as set forth in Claim 13 further comprising a restricted access administrator console communicative with said bid database for allowing conversion of sealed bids to unsealed bids.

**Claim 21 (original):**

The system as set forth in Claim 13 further comprising a system clock or timer for use by said database query server communicative to determine which seals of sealed bids have expired as a criteria for retrieving unsealed bids.